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RCRA, Superfund & EPCRA Hotline Training Module

Introduction to:

**Interface with Other
Federal Regulatory
Programs**

Updated June 1997

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INTERFACE WITH OTHER FEDERAL REGULATORY PROGRAMS

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1. INTRODUCTION

The Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986, also known as Title III of the Superfund Amendments and Reauthorization Act (SARA), mandated a program for state and local governments and industry regarding emergency planning, chemical inventory and release reporting, and public access to reported information on hazardous and toxic chemicals. Specific requirements for emergency planning and chemical reporting have been discussed in previous modules. Parts of the EPCRA program, however, share overlapping areas of responsibility with the mandates of other agencies under other statutes. Other federal agencies, such as the Occupational Safety and Health Administration (OSHA), the Department of Transportation (DOT), and the Federal Emergency Management Agency (FEMA), administer programs that intertwine with EPCRA. EPA also implements other environmental programs that borrow from and overlap with the scope of EPCRA requirements. Historically, certain types of facilities, such as federal facilities, have been covered differently under the EPCRA program. This module covers each of the overlapping federal agencies and their specific regulatory programs, EPA's implementation of other environmental laws, the applicability of EPCRA to federal facilities, and a discussion of training grants available to those administering the EPCRA program.

When you have completed this module you will be familiar with how different federal agencies and other EPA programs interact with EPCRA. Specifically, you will be able to:

- Explain the effect of OSHA provisions on EPCRA
- Define the scope of DOT's impact on the transportation exemption found in EPCRA §327
- Explain National Pollutant Discharge Elimination System (NPDES) general storm water permits
- Describe the effect the National Response Team (NRT) has on the implementation of EPCRA
- Explain how EPCRA applies to federal facilities
- Explain how grant funds are allocated and distributed
- Describe the use of training grants.

Use this list of objectives to check your knowledge of this topic after you complete the training session.

2. REGULATORY SUMMARY

All federal regulatory programs grow out of congressional intent to shape behavior or correct some harm. By the time EPCRA was promulgated as Title III of SARA in 1986, many federal programs, operating under different federal agencies, were already in place to address some environmental problems, workplace and community safety risks, and hazardous material management issues. In fitting into this preexisting framework of regulations, EPCRA had the benefit of past experience and the burden of avoiding regulatory conflict and overlapping requirements. The agencies, statutes, and regulatory programs that have the greatest impact on or interface with EPCRA include OSHA (under the Department of Labor), the Clean Air Act, DOT, the Hazardous Materials Transportation Uniform Safety Act, the Oil Pollution Act, NPDES, NRT, and FEMA.

This module briefly presents the relationship of these agencies and programs to SARA Title III. The module also addresses a related issue: EPCRA's applicability to federal facilities.

2.1 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

OSHA, within the Department of Labor, is responsible for regulations governing worker safety. A portion of OSHA's program addresses chemical risks to workers. There are three areas where OSHA's purview most frequently interacts with the EPCRA program and its regulations: the hazard communication standard, the process safety management standard, and the hazardous waste operations and emergency response worker protection standard.

HAZARD COMMUNICATION STANDARD

The Hazard Communication Standard (HCS), codified at 29 CFR §1910.1200, requires employers to create a program using labeling, training, and material safety data sheets (MSDSs) to inform workers about chemical risks and safe management practices. It dictates which facilities are required to prepare and maintain MSDSs for hazardous chemicals. Since only those facilities required to prepare or have available an MSDS must comply with EPCRA §§311 and 312, changes to the HCS also affect EPCRA. Initially, HCS applied only to facilities classified in SIC codes 20-39 (i.e., manufacturers), but now most facilities are covered by the HCS, and consequently must comply with §§311 and 312. (Details of these regulations are provided in the module entitled Hazardous Chemical Inventory Reporting).

PROCESS SAFETY MANAGEMENT STANDARD

OSHA developed requirements for chemical process safety when it determined that, although its general industry standards and the HCS were in place, these measures

did not address the potential dangers posed by a large accidental release of a hazardous chemical. The Clean Air Act (CAA) Amendments of 1990 also addressed this issue, directing OSHA to develop a chemical process safety standard aimed at preventing accidental releases.

On February 24, 1992 (57 FR 6356), OSHA promulgated its process safety management standard, simultaneously completing its own project initiative and fulfilling the statutory mandate of CAA. This standard applies to facilities that have one or more of the listed highly hazardous chemicals on site above its threshold quantity. Generally, it requires employers to:

- Develop and maintain information identifying chemical, process, and equipment hazards
- Perform workplace hazard assessments
- Consult with employees on accident prevention plans
- Establish a system to respond to hazard assessment findings
- Periodically review the hazard assessment and response system
- Develop and implement written operating procedures for chemical processes
- Train employees in operating procedures, emphasizing hazards and safe practices
- Ensure that contractors have adequate information and training
- Train and educate employees and contractors in emergency response procedures to the standard set in SARA §126(d)
- Establish a quality assurance program for process-related equipment, maintenance materials, and spare parts
- Establish maintenance systems for critical process-related equipment
- Conduct initial safety reviews of newly installed or modified equipment
- Establish procedures to follow when chemicals, processes, or equipment changes occur
- Investigate all incidents resulting, or potentially resulting, in a major accident in the workplace.

Included in appendices to the regulations were nonmandatory compliance guidelines and recommendations. This final rule became effective May 26, 1992. The regulations on facility risk management plans (RMPs) under CAA §112(r) are similar to this standard, acting as an effort to lessen the number and severity of serious chemical accidents (61 FR 31667; June 20, 1994). For more information on CAA §112(r), see the module entitled Accidental Release Prevention Program.

HAZARDOUS WASTE OPERATIONS AND EMERGENCY RESPONSE

SARA §126(e) required OSHA to promulgate regulations protecting the health and safety of workers engaged in operations at hazardous waste sites, hazardous waste treatment facilities, and emergency response locations. The hazardous waste operations and emergency response worker protection standard (HAZWOPER) was published as an interim final rule on December 19, 1986 (51 FR 45654), and covered issues such as training, medical surveillance, and maximum exposure limits. Because of an overlap in statutory purview, two final rules were published, one by OSHA on March 6, 1989 (54 FR 9294), and one by EPA under EPCRA on June 23, 1989 (54 FR 26654).

2.2 DEPARTMENT OF TRANSPORTATION

The Department of Transportation (DOT) affects the implementation of EPCRA through the transportation exemption, training and emergency response activities, and the Oil Pollution Act.

TRANSPORTATION EXEMPTION

Transportation of substances or chemicals, including storage incident to such transportation, is exempt from the requirements of EPCRA (except §304) under §327. Although the term "transportation" includes any movement of material within a facility or across facility boundaries, the phrase "storage incident to transportation" is limited under the Hazardous Materials Transportation Act (HMTA) to the storage of material that is still moving under active shipping papers and that has not reached the ultimate consignee. The House Conference Report on SARA (October 3, 1986) stipulated that storage related to transportation under §327 should be consistent with the transportation provisions in HMTA. Substances in storage must still be under active shipping papers awaiting shipment to their final destination in order to be exempt from reporting under EPCRA.

TRAINING AND EMERGENCY RESPONSE

DOT is involved in training and emergency response actions related to EPCRA. DOT's Research and Special Programs Administration (RSPA) developed the Emergency Response Guidebook, a handbook designed to aid first-responders to hazardous materials releases. RSPA is also involved in the administration of

Hazardous Materials Transportation Uniform Safety Act (HMTUSA) training and planning grants (see Section 4). Finally, the U.S. Coast Guard (USCG), which operates as part of DOT during peacetime, is involved in the NRT (see Section 2.3).

OIL POLLUTION ACT

Congress enacted the Oil Pollution Act of 1990 (OPA) in response to the increasing problem of oil spills, as dramatized by the Exxon Valdez release in Alaska's Prince William Sound in 1989. The goals of OPA are to expand planning and spill prevention activities, to improve preparedness and response capabilities, to ensure that shippers and oil companies pay for cleanups, and to establish a research and development program. Many of the requirements of OPA resulted in changes to CERCLA's National Oil and Hazardous Substances Pollution Contingency Plan, or NCP (40 CFR Part 300).

DOT, through USCG, and EPA both play significant roles in OPA's implementation. All navigable waters of the United States are required to be covered by a contingency plan. EPA's Chemical Emergency Preparedness and Prevention Office (CEPPO) is responsible for designating onshore implementation "Areas" and appointing Area Committees responsible for drafting Area Contingency Plans. USCG held similar responsibility for the coastal zone. Area Contingency Plans are available to the public through the National Technical Information Service (NTIS).

Tank vessels, offshore oil facilities, and certain onshore facilities are required to submit facility response plans designed to ensure that sufficient personnel and equipment are available to respond to and mitigate a worst-case discharge. These plans must be consistent with other statutes and regulations, including EPCRA and the NCP.

USCG is required to complete a list of equipment and resources available for response actions. Response equipment must be inspected periodically and bulk vessels must carry equipment that uses the best technology economically feasible. For more information on OPA requirements, refer to module entitled Spill Prevention Control and Countermeasure Requirements and the Oil Pollution Act of 1990.

2.3 NATIONAL RESPONSE TEAM

EPA is primarily responsible for the EPCRA program, however, the NRT plays a significant role in carrying out the emergency planning provisions in §§301-303. The NRT is a multiorganizational body that is responsible for coordinating emergency preparedness and response throughout the country. EPA is one of the 16 federal agencies that implement oil and hazardous material emergency measures through the National Contingency Plan for Oil and Hazardous Substances. Thirteen

Regional Response Teams (RRTs) provide regional coordination. On-Scene Coordinators from lead agencies provide the response management. EPA chairs the NRT, while USCG provides the vice-chairperson. Both organizations provide co-chairs of the RRTs.

The NRT has developed two guidance documents for the preparation and implementation of emergency plans: Hazardous Materials Emergency Planning Guide (NRT-1) and Developing a Hazardous Materials Exercise Program (NRT-2). EPCRA §303(f) gives the RRTs authority to review and comment on emergency plans. For this purpose the NRT developed a set of recommended review criteria which are contained in the document Criteria for Review of Hazardous Materials Emergency Plans (NRT-1A). In addition, the NRT has developed a summary report entitled Lessons Learned from Incidents and Exercises. These four documents are available through the Hotline.

2.4 NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

NPDES is the national program for issuing, monitoring, and enforcing permits for direct discharges of pollutants to the surface waters of the United States. Under the authority of the Clean Water Act, on November 16, 1990 (55 FR 47990), EPA published final regulations setting forth NPDES permit application requirements for storm water discharges associated with industrial activities and certain municipal storm sewer systems. Facilities are required to develop and implement stormwater pollution prevention plans and conduct site inspections. Facilities subject to EPCRA are also subject to additional requirements.

EPA's Office of Water has designated over 250 of the EPCRA §313 toxic chemicals as "§313 water priority chemicals." The most recent list of §313 water priority chemicals was published in the September 29, 1995, Federal Register (60 FR 50804). A facility required to file a Form R for one of these chemicals must meet the minimum pollution prevention plan requirements, and must also comply with special provisions for areas where water priority chemicals are stored, processed, or otherwise handled. These provisions include standards for appropriate containment, drainage control, and/or diversionary structures. Facilities have three years from the final rule date, or three years from when they first became subject to EPCRA §313 requirements, to comply with these provisions.

3. FEDERAL FACILITIES

Since federal facilities are not included in the definition of a "person" in EPCRA §329(7), the statute does not require such facilities to comply with EPCRA requirements. On September 30, 1988, former EPA Administrator Lee Thomas encouraged all federal facilities to voluntarily comply with and submit any information required by EPCRA. Many federal agencies including EPA, the Department of Energy (DOE), the Department of Defense (DOD), and the National Aeronautics and Space Administration (NASA), issued orders requiring their facilities to comply in whole or in part with EPCRA requirements. DOE was the first to voluntarily comply with EPCRA, submitting Toxics Release Inventory Form Rs for Reporting Year 1994.

Government-owned contractor-operated facilities (GOCOs) are included in the definition of a "person." A GOCO is a government facility that is owned by a federal agency, but is partially or entirely operated by a private contractor. These GOCOs include federal, state, and local corporations. A contractor that operates a facility for a federal agency is required to submit EPCRA information if the contractor-operated part of the facility meets the reporting requirements.

On April 3, 1993, President Clinton signed Executive Order 12856, Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements. The Executive Order requires federal facility compliance with all provisions of EPCRA, and mandates that federal facilities and agencies take actions to significantly reduce the amount of toxic chemicals used and released into the environment.

The Executive Order established a timetable for federal facilities to comply with the different reporting requirements under EPCRA. The deadlines are as follows:

January 1, 1994	Begin reporting releases under EPCRA §304
March 3, 1994	Submit emergency planning notification under EPCRA §302
August 3, 1994	Submit federal agency-wide pollution prevention strategies to EPA
August 3, 1994	Submit information for local emergency response plans under EPCRA §303
August 3, 1994	Submit MSDSs under EPCRA §311
March 1, 1995	Submit hazardous chemical inventory forms under EPCRA §312

July 1, 1995	Submit Toxics Release Inventory forms for the 1994 reporting year under EPCRA §313
August 3, 1995	Department of Defense (DOD) and General Services Administration (GSA) identify opportunities to revise specifications and standards
October 1, 1995	Submit first federal agency-wide annual progress report
December 31, 1995	Facilities prepare pollution prevention plans
1999	DOD and GSA revise specifications and standards
1999	Agencies reduce total releases and transfers of toxic chemicals or pollutants by 50 percent.

The Executive Order contains several provisions that differ from those under EPCRA. The first broadens the scope of EPCRA §313 reporting to include non-manufacturing facilities. Federal facilities that have 10 or more full-time employees are now required to file a Form R for chemicals that exceed manufacturing, processing, or otherwise use thresholds, regardless of whether or not they are in SIC codes 20-39. Since most federal facilities do not fall within the manufacturing sector, this allows activities at all federal facilities to be evaluated for toxic chemical releases and for pollution prevention opportunities.

Second, EPA, by regulation, has exempted certain uses of toxic chemicals by facilities in SIC codes 20-39 from EPCRA §313 threshold determinations and reporting requirements. Section 3-304(b) of the Executive Order applies these regulatory exemptions to the federal agencies. The exemptions were created to provide a certain degree of reporting burden relief for covered manufacturing facilities by exempting small and ancillary uses of listed chemicals from the reporting requirements. Federal facilities may apply these exemptions to their operations. EPA recommends, however, that federal facilities consider the nature and scale of the activity when deciding whether or not to take a reporting exemption. In keeping with the spirit of Executive Order 12856, EPA encourages facilities to report for significant uses of a listed toxic chemical.

The enforcement and penalty provisions of EPCRA §§325 and 326 are not applicable to federal facilities. The Executive Order, however, sets up an internal mechanism to monitor compliance. The head of each federal agency is responsible for ensuring compliance. EPA may conduct compliance reviews and inspections at any time and is required to report annually to the President on federal facility compliance with respect to EPCRA §313 reporting.

The Executive Order also requires facilities and agencies to perform specific pollution prevention activities. Agencies were required to submit pollution

prevention strategies by August 3, 1994, and facilities were required to prepare a pollution prevention plan by December 31, 1995. Agencies must also reduce total releases and transfers of toxic chemicals or toxic pollutants by 50 percent by December 31, 1999.

EPA has issued guidance to aid federal facilities in complying with EPCRA regulations, including:

- Guidance on E.O. 12856: Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements, EPA 600-B-95-005
- Executive Order 12856: Federal Compliance With Right to Know Laws and Pollution Prevention Requirements. Questions and Answers, EPA 745-R-95-011
- Pollution Prevention and Right-to-Know in the Government: E.O. 12856, EPA 100-K-93-001.

These three documents are available through the Hotline.

4. GRANT PROGRAMS

There are three grant programs that impact EPCRA: §305(a) training grants, CEPP technical assistance grants, and Hazardous Materials Emergency Preparedness (HMEP) grants.

SECTION 305(a) TRAINING GRANTS

The EPCRA §305(a) funding for training, initially authorized for a limited number of years, has been extended each year in response to constituency requests. The program is available for both states and tribes. The purpose of the funding is to help improve emergency planning, emergency notification, hazardous chemical reporting, preparedness, mitigation, response and recovery capabilities in support of Title III. Training-related activities covered by the funding include instructor fees, participant and instructor travel and per diem, classroom rental, and training materials. Equipment is covered only if specifically identified to support delivery of an eligible course and approved by the FEMA Regional Training Manager.

Possible training sources that can be used include federal training activities and conferences, state programs, and private and university courses. Section 305(a)(2) authorized an appropriation of up to \$5 million for fiscal years (FYs) 1987 through 1990. Actual appropriations were \$3.95 million in FY 1987, \$4.725 million for FY 1988, \$3.84 million for FY 1990, \$3 million for FY 1992, and \$3 million for FY 1993. Congress did not appropriate funds for FYs 1989 or 1991. A total of \$5 million was appropriated for fiscal year 1994; \$200,000 was set aside for tribal funds, which are distributed under individual cooperative agreements. Separate guidance was provided for tribes; however, the criteria for grant awards were similar to those for state applicants in requiring a 20 percent funding match (which can be a "soft," non-financial contribution) and specific background information. This includes a description of hazards and current response procedures, training goals, and proposed number of trainees and the type of training to be provided.

CEPP TECHNICAL ASSISTANCE GRANTS

EPA began the CEPP Technical Assistance Grant program for states and tribes in 1990 to provide funds to enhance state Title III programs, and especially to improve the effectiveness of LEPCs. Grants may be for one or two years and generally support projects that will result in a "product" that can be used as a model for other LEPCs, such as a guidance document, video, demonstration project, or outreach material. Since grants are made under the authority of the Toxic Substances Control Act (TSCA), all proposal activities must be related to chemicals subject to regulation under TSCA. Grant amounts totaled \$1.2 million in FY 1990, \$1.4 million in FY 1991, \$500,000 in FY 1992, \$1.3 million in FY 1993, \$1.2 million in FY 1994, and \$1.3 million in FY 1995. Projects included CAMEO training, the Clean Air Act, Mexican

and Canadian border issues, Tribal Emergency Response Commission development, automated Tier II reporting, assistance for high-risk and high priority areas, and LEPC enhancements.

HMEP GRANTS

The HMEP grant program evolved from a proposal developed by DOT, FEMA, the Department of Labor/OSHA, and DOE. It was designed to support the framework and working relationships established within the National Response System and EPCRA. DOT's HMEP grants distribution system has proven to be very effective. Grants are awarded to states upon the governor's designation. The state agency receiving the grant is responsible for distributing funds within the state in accordance with HMEP grant rules and required certifications. An Interagency Coordination Group, chaired by DOT and currently representing FEMA, EPA, DOE, OSHA, and the Bureau of Indian Affairs, coordinates implementation of the HMEP grant program. Assistance is supplied to grantees by DOT ensuring accomplishment of objectives and proper expenditure of funds.

Two types of grants are available: planning and training grants. Planning grants are to be used for: (1) developing, improving, and implementing emergency plans under EPCRA; (2) conducting commodity flow studies; and (3) determining the need for regional hazardous material response. The Federal Hazardous Material Law (FHML) authorizes the appropriation of \$5 million in annual planning grants to states, territories, and Native American tribes, with a required 75 percent pass-through of funds to LEPCs. Training grants are to be used for training public sector employees to respond safely and efficiently to accidents and incidents including those involving the transportation of hazardous materials. FHML authorizes the appropriation of \$7.8 million in annual training grants to states, territories, and Native American tribes, with 75 percent of the funding used to provide training to local responders, including volunteers.

5. MODULE SUMMARY

Although EPCRA was the first law to formally establish emergency planning requirements and community right-to-know provisions, many other federal agencies and EPA programs overlap and intertwine with EPCRA's implementation. OSHA, DOT, and FEMA oversee programs similar in purpose and scope to EPCRA. Other environmental programs, such as NPDES, borrow terminology from EPCRA. Federal facilities, formerly exempt from EPCRA reporting, now must also participate in the reporting requirements and emergency planning provisions. In order to provide assistance in implementing EPCRA, several grant programs were established. As discussed in this module, parts of the EPCRA program share areas of responsibility with the mandates of other agencies and EPA programs.